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Office of the Secretary
Federal Communications Commission
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Washington, DC 20554

RE: Implementation of Section 224 of the Act, GN Docket No. 07-245

Alabama Rural Electric Association files these brief reply comments in support of the comments filed by the National Rural Electric Cooperative Association ("NRECA") in response to the Federal Communications Commission's ("Commission" or "FCC") July 15, 2010 Order and Further Notice of Proposed Rulemaking ("NPRM")¹ regarding the Implementation of Section 224 of the Communications Act ("Act").²

The NPRM is of extreme interest to us. While 47 U.S.C. § 224(a)(1) of the Act exempts electric cooperatives from FCC pole attachment jurisdiction, any changes the FCC makes to its regulations can impact electric cooperatives. The Commission's regulations tend to set "standards" that impact pole attachment negotiations between electric cooperatives and attachers.

- The Alabama Rural Electric Association of Cooperatives (AREA) is a member-owned federation of 22 electric distribution cooperatives and one wholesale power provider providing electric energy to rural areas in Alabama. Collectively, Alabama's 23 rural electric cooperatives deliver power to more than 1 million people, or one-fourth of the state's population. Yet rural electric cooperative power lines cover more than 70 percent of the state's land mass, making our job of providing low-cost, dependable power more challenging than any other utility in Alabama.

Alabama's 22 distribution cooperatives maintain more than 71,000 miles of power line. Our consumers are few and far between averaging just over seven homes and businesses for every mile of power line. Consequently, our electric distribution co-ops must be modern, highly efficient, consumer-oriented businesses.

Cooperatives offset the expense of having to maintain more miles of power line per consumer than other utilities by operating on a non-profit, cost-of-service basis. This, and modern management techniques, help keep co-op rates highly competitive in today's demanding and technical market.

¹ Order and Further Notice of Proposed Rulemaking, Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, WC Docket No. 07-245, GN Docket No. 09-51, FCC 10-84, 75 *Fed. Reg.* 41,338 (July 15, 2010).

² 47 U.S.C. § 224, *et. seq.*

- **The desire to speed up broadband deployment through expedited make-ready procedures must be balanced against the need to ensure safe and reliable electric service.**

As NRECA argues, "The Commission's 'Need for Speed' make-ready proposals must be balanced with the need to ensure safe and reliable delivery of electric services." NRECA's comments describe the extent to which unauthorized attachments are problems faced by electric cooperatives nationwide. NRECA comments further describe troubling engineering practices used by attachers in their rush to deploy their lines and equipment. Such practices are not, as the NPRM suggests, overblown or overstated. These descriptions are consistent with what we regularly encounter and must devote significant time and resources to rectify. FCC rules that deter such practices would be welcomed as setting a new de facto standard for attachers when they attach to cooperative poles.

The FCC must remember that our cooperatives' first and foremost obligation is to our electric consumers. While we want broadband in all of our communities, we are certain that our member-owners would prefer not to have those services if they result from rules that could jeopardize the safety of our line workers or put the public in danger. Further, we hope the Commission decides not to impose greater administrative burdens, iron-clad timelines, and new requirements to address issues better left to private contracts on regulated pole owners, because attachers will come to expect us to do the same. We simply do not have the same resources as larger, investor-owned utilities with which the Commission is more familiar. And, some of the NPRM's proposals (such as a make-ready charge schedule and pole inventory database) are simply unnecessary and/or too burdensome.

- **Lowering pole attachment rates will not help spur broadband deployment in rural and sparsely populated areas.**

Our first hand experience indicates that even very low pole attachment rates will not induce service providers to deploy broadband to our most difficult to serve, sparsely populated territories. It has been well established that low population density is the most significant barrier to rural broadband deployment. Lowering the pole attachment rates will not change this. A reformed Universal Service Fund to accommodate broadband is the right mechanism to foster deployments to high-cost areas and make the economics work for providers to continue to serve those areas. Additionally, we believe that the growth in revenues from new service offerings will, over the short run, stimulate the deployment of broadband services. As evidence of this, we have attached CenturyLink's service area map for Alabama. CenturyLink states that at year end 2009, 94% of its 250,000 access lines, many of which serve rural Alabama, were already DSL enabled. AREA has, over the past two years, negotiated new joint use agreements with CenturyLink and AT&T. Additionally, AREA and Charter Communications have recently negotiated a statewide pole attachment agreement. Although various terms and conditions differ in the two forms of agreement, neither form of agreement contains rental rates that are based on the type of communications services provided.

Consequently, where Alabama's electric cooperatives' poles support existing attachments, the communications companies can upgrade those facilities with no impact on the pole rental as a result of the type of service provided.

- **Our cooperative business model requires that pole attachers must pay their own way.**

As noted in NRECA's comments, only 17% of electric cooperatives report using the FCC's rates formulas to determine pole attachment rental rates. We believe that this is because these formulas, which the NPRM proposes to modify to shift more costs to pole owners, do not align well with our business model. Tax exempt electric cooperatives must follow Internal Revenue Service cooperative principles to maintain their tax exemption. This means equitably allocating costs and "at cost operation," that is, not operating for profit or below cost (not cross-subsidizing). If a cooperative cannot recover the costs associated with providing pole attachments, then electric consumers must make up the difference. This is particularly unfair when these consumers may not even want or be offered services by the provider making the pole attachments.

As previously stated, AREA has negotiated statewide pole attachment terms and conditions with the major ILECs, and the largest cable provider in Alabama. Those arms-length negotiations were conducted over a period of years. AREA and the communications companies elected to negotiate statewide rental rates instead of using the FCC's formulas. It is important to note that the AREA cooperatives have agreed, in at least one statewide contract, to rental rates for cooperative attachments to the ILEC's poles, that are significantly higher (over 27% higher), than the rate paid by the ILEC for attachments to Alabama electric cooperative's poles. Further, AREA and the major Alabama ILECs have agreed to terms that encourage each party to share the costs and responsibilities of pole ownership.

Conclusion:

- **We have the same goal – universal broadband – but the NPRM's pole attachment proposals are the wrong "solutions."**

The Alabama Rural Electric Association of Cooperatives, NRECA and the FCC obviously share the common goal of improving the opportunities denied to consumers who lack broadband services. While well intended, much of what the NPRM proposes to do in this proceeding would set a new bar for electric cooperative pole attachment practices that could negatively impact our ability to provide safe and reliable electric service to our consumers and appropriately recover our pole attachment related costs. We urge the FCC to consider these comments and those of NRECA to more fairly balance the goal of speedier broadband deployment with the need to ensure the safety and reliability of our electric infrastructure and quality service to our consumers.

Respectfully submitted,

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